



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 20 September 2011
(OR. fr)**

14358/11

**Interinstitutional File:
2010/0312 (COD)**

**SCH-EVAL 152
SCHENGEN 27
FRONT 116
COMIX 582
CODEC 1465**

PROPOSAL

from:	European Commission
dated:	16 September 2011
No Cion doc.:	COM(2011) 559 final
Subject:	Amended proposal for a regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2011) 559 final



EUROPEAN COMMISSION

Brussels, 16.9.2011
COM(2011) 559 final

2010/0312 (COD)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the establishment of an evaluation and monitoring mechanism to verify the
application of the Schengen acquis**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Schengen governance – strengthening the area without internal border control

As regards the context and rationale for the amendments contained in the present proposal, and for a detailed explanation of how they are intended to function in practice, reference is made to the Commission Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled '*Schengen governance – strengthening the area without internal border control*', which is adopted together with this proposal.

1.2. Legislative changes

On 16 November 2010, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on the establishment of an evaluation mechanism to verify the application of the Schengen acquis¹. This proposal strengthens the Schengen evaluation mechanism, in particular by streamlining the follow up by requesting the evaluated Member State to submit an action plan to remedy the weaknesses identified and to regularly report on the implementation of such an action plan until all weaknesses have been remedied. In case of serious deficiencies having an impact on the overall level of security of one or more Member States, it is foreseen to inform the Council and the European Parliament, thus exercising peer pressure at the highest political level on the failing Member State to comply with the rules.

A Member State shall be evaluated at least once within a five year period; however, the planning might be adapted in accordance with the needs and the situations identified on the ground. Also, unannounced visits may be carried out in order to monitor the correct implementation of all accompanying measures.

In order to provide for the necessary legal framework to respond to the invitation of the European Council of 23-24 June 2011 to further strengthen the Schengen evaluation system and to introduce a safeguard clause to respond to truly critical situations where a Member State is no longer able to comply with its obligations under the Schengen rules as explained in detail in the Communication referred to in point 1.1, the Commission hereby amends its proposal by providing for additional support at the Union and national level, strengthening the support given by Frontex and by introducing the possibility of a Union-based mechanism for the reintroduction of border control at internal borders where a Member State is persistently neglecting its obligation to control its section of the external border, and insofar as the circumstances would be such as to constitute a serious threat to public policy or to internal security at the Union or national level. The introduction of such a mechanism also implies the modification of the Schengen Borders Code which is being presented at the same time as this proposal.

The need to modify the current Schengen evaluation mechanism as such has been explained in detail in the above-mentioned proposal of 16 November 2010. Although the latter is proposal is hereby replaced by the present one, the reasons for presenting the November 2010

¹ COM (2010) 624 of 16.11.2010

proposal remain unchanged; the Commission therefore refrains from reproducing the detailed justification in the current amended proposal. As the initial proposal has not yet been adopted by the legislators (the European Parliament has not yet adopted a first reading position in accordance with Article 294(3) TFEU on the proposal), the amendment is included in the overall text of that initial proposal², which remains unchanged except for the changes concerning the support to be given to a Member State and possible reintroduction of border control at internal borders (Articles 14 and 15 as well as a reference to "monitoring" throughout the text) and for certain adaptation on the implementing powers given to the Commission (Article 5, 8, 13 and 17). These adaptations are necessary as the relevant horizontal rules on 'comitology' have been modified after the presentation of the initial proposal by Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers³. Moreover some further adaptations are made to the text, including those relating to the role of Frontex (Article 6), Europol (Article 8) and reporting to the European Parliament and Council (Article 19).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The first discussions on the Schengen evaluation proposal in the Council and in the European Parliament, as well as the latter's resolution of 7 July 2011⁴, show that there is broad political support for the notion that a functioning mechanism needs to be accompanied by tools allowing for a serious deficiency in the application of the *acquis* by a Member State to be effectively responded to.

In its Communication on migration⁵ the Commission suggested the possibility of the introduction of a mechanism allowing for a decision at the European level defining which Member States would exceptionally reintroduce border control at internal borders and for how long. The mechanism should only be used as a last resort after other (emergency) measures have been taken to stabilise the situation at the relevant external border section either at the European level, in a spirit of solidarity, and/or at national level to ensure better compliance with the common rules.

This idea was welcomed by the Justice and Home Affairs Council on 12 May 2011, and by the European Council at its meeting on 23-24 June 2011 where it called for a mechanism to be 'introduced in order to respond to exceptional circumstances putting the overall functioning of the Schengen cooperation at risk, without jeopardising the principle of free movement of persons.'

3. LEGAL ELEMENTS OF THE PROPOSAL

This proposal constitutes a development of the policy on internal borders in accordance with Article 77 (2) (e) of the Treaty on the Functioning of the European Union (TFEU). Article 77

² **Amendments are highlighted in bold and are underlined.**

³ OJ L 55 of 28.2.2011, p. 13.

⁴ P7_TA(2011)0336

⁵ COM (2011) 248 of 4.5.2011

provides for the abolition of border control at internal borders as the ultimate objective of an area of free movement of persons within the European Union, as laid down in Article 26 of the TFEU. The abolition of border control at internal borders must be accompanied by measures in the field of external borders, visa policy, the Schengen Information System, data protection, police cooperation, and judicial cooperation in criminal matters. Correct application of these measures makes it possible to maintain an area without border control at internal borders. Evaluation and monitoring of the correct application of these measures therefore serves the ultimate policy objective of maintaining the area free of border control at internal borders. Measures aimed at mitigating the adverse impact of persistent serious deficiencies in a Member State's application of the Schengen *acquis*, including the possibility of resorting to the exceptional temporary reintroduction of border control at internal borders as a measure of last resort in circumstances where the deficiencies would be such as to constitute a serious threat to public policy or to internal security at the Union or national level, likewise serve to further the attainment of this ultimate objective.

The proposal for the establishment of a Schengen evaluation mechanism presented in November 2010 contains all necessary information on the budgetary implications, which remain unchanged.

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77 (2) (e) thereof,

Having regard to the proposal from the **European** Commission,

After transmission of the draft legislative act to the ~~n~~National Parliaments,

Acting in accordance with the ~~procedure laid down in Article 294 of the Treaty~~ **ordinary legislative procedure**,

- (1) The Schengen area without ~~internal border controls~~ **border control at internal borders** relies on effective and efficient application by the Member States of accompanying measures in the areas of external borders, visa policy, the Schengen Information System, including data protection, police cooperation, judicial cooperation in criminal matters and drugs policies.
- (2) By decision of the Executive Committee of 16 September 1998⁶, a Standing Committee on the evaluation and implementation of Schengen was set up. The Standing Committee was given the mandate, first, to establish whether all the preconditions for lifting ~~internal border controls~~ **border control at internal borders** with a candidate State have been fulfilled and, second, to ensure that the Schengen *acquis* is properly applied by the States already implementing the *acquis* in full.
- (3) A specific evaluation **and monitoring** mechanism to verify application of the Schengen *acquis* is necessary given the need to ensure high uniform standards in application of the Schengen *acquis* in practice and to maintain a high level of mutual trust between those Member States that form part of an area without ~~internal border controls~~ **border control at internal borders**. Such a mechanism should build upon close cooperation between the Commission and those Member States.
- (4) The Hague Programme⁷ invited the Commission 'to submit, as soon as the abolition of controls at internal borders has been completed, a proposal to supplement the existing

⁶ OJ L 239, 22.9.2000, p. 138.

⁷ OJ C 53, 3.3.2005, p. 1 (point 1.7.1).

Schengen evaluation mechanism with a supervisory mechanism, ensuring full involvement of Member States experts, and including unannounced inspections’.

- (5) The Stockholm Programme⁸ ‘considers that the evaluation of the Schengen area will continue to be of key importance and that it therefore should be improved by strengthening the role of Frontex in this field’.
- (6) The evaluation mechanism set up in 1998 should therefore be revised as regards the second part of the mandate given to the Standing Committee. The first part of the mandate given to the Standing Committee should continue to apply, as laid down in Part I of the Decision of 16 September 1998.
- (7) The experience gathered during previous evaluations demonstrates the need to maintain a coherent evaluation **and monitoring** mechanism covering all areas of the Schengen *acquis* except those where a specific evaluation mechanism already exists within EU law.
- (8) Member States should be closely involved in the evaluation **and monitoring** process. ~~Measures for implementation of this Regulation should be adopted by the management procedure, as provided for in Article 4 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.~~

In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. These powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁹. In view of the terms of Article 2(2)(b)(iii) of that Regulation, the examination procedure is applicable.

- (9) The evaluation **and monitoring** mechanism should set up transparent, efficient and clear rules on the method to be applied for the evaluations, the use of highly qualified experts for on-site visits and the follow-up to the findings of the evaluations. In particular, the method should provide for unannounced on-site visits to supplement the announced on-site visits, notably with regard to border controls and visas.
- (10) The evaluation **and monitoring** mechanism should also include verification of the relevant legislation on the abolition of controls at internal borders and checks within national territory. In view of the specific nature of these provisions, which do not affect the internal security of the Member States, the relevant on-site visits should be entrusted exclusively to the Commission.
- (11) The evaluation **and monitoring** should pay particular attention to respect of fundamental rights ~~when applying~~ **in the application of** the Schengen *acquis*.

⁸ Council document 17024/09, adopted by the European Council on 10/11 December 2009.

⁹ OJ L 55 of 28.2.2011, p. 13.

(12) The evaluation should guarantee that the Member States apply the Schengen rules effectively in accordance with fundamental principles and norms. Therefore the evaluation encompasses all relevant legislation and operational activities contributing to the functioning of an area without border control at internal borders.

(1213) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union¹⁰ (hereinafter referred to as 'Frontex') should support implementation of the mechanism, primarily in the area of risk analysis relating to external borders. The mechanism should also be able to rely on the expertise of the Agency for carrying out on-site visits at the external borders on an *ad hoc* basis.

(14) The evaluation and monitoring mechanism should also make it possible for serious deficiencies in the application of the *acquis* to be addressed by ensuring that appropriate support would be provided by the Commission with the technical assistance of Frontex, Europol or other relevant European Union Agencies. As a measure of last resort, and insofar as the circumstances would be such as to constitute a serious threat to public policy or to internal security at the Union or national level, the possibility to reintroduce border control at internal borders to the extent and for the duration necessary to mitigate the adverse consequences flowing from the deficiencies should be provided for.

(1315) Member States should ensure that experts made available for on-site visits have the necessary experience and have undergone specific training for this purpose. Appropriate training should be provided by the relevant bodies (e.g. Frontex) and funds should be made available to Member States for initiatives targeted at specific training in the field of evaluation of the Schengen *acquis* from the existing financial instruments and by development thereof.

(1416) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in adoption of this Regulation and is therefore not bound by it or subject to application thereof. Given that this Regulation builds upon the Schengen *acquis*, under Title V of Part Three of the Treaty on the Functioning of the European Union, Denmark should, in accordance with Article 4 of that Protocol, decide within six months after adoption of this Regulation whether it will implement it in its national law.

(1517) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which the United Kingdom is not participating, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*¹¹. The United Kingdom is therefore not taking part in adoption of this Regulation and is not bound by it or subject to application thereof.

¹⁰ Council Regulation (EC) No 2007/2004 of 26 October 2004 (OJ L 349, 25.11.2004, p. 1).

¹¹ OJ L 131, 1.6.2000, p. 43.

(1618) This Regulation constitutes a development of provisions of the Schengen *acquis*, in which Ireland is not participating, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*¹². Ireland is therefore not taking part in adoption of this Regulation and is not bound by it or subject to application thereof.

(1719) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*¹³.

(1820) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Agreement between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*¹⁴.

(1921) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis*, as provided for by the Protocol ~~signed~~ between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹⁵.

(2023) As regards Cyprus, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 3(2) of the 2003 Act of Accession.

(2124) As regards Bulgaria and Romania, this Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it, as provided for by Article 4(2) of the 2005 Act of Accession.

(2225) Experts from Cyprus, Bulgaria and Romania should nevertheless participate in **the** evaluation of all parts of the Schengen *acquis*,

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose and scope

This Regulation establishes an evaluation **and monitoring** mechanism to verify application of the Schengen *acquis* in the Member States to which the Schengen *acquis* applies in full.

¹² OJ L 64, 7.3.2002, p. 20.

¹³ OJ L 176, 10.7.1999, p. 36.

¹⁴ OJ L 53, 27.2.2008, p. 52.

¹⁵ **OJ L 160 of 18.6.2011, p. 19.**

Experts from the Member States which, in accordance with the relevant Act of Accession, do not yet fully apply the *acquis* shall nevertheless participate in evaluation **and monitoring** of all parts of the *acquis*.

Article 2

Definitions

For the purpose of this Regulation,

‘Schengen *acquis*’ means the provisions of the Schengen *acquis*, as integrated into the European Union framework by the Protocol annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, together with the acts building upon it or otherwise related to it.

Article 3

Responsibilities

1. The Commission shall be responsible for implementation of this evaluation **and monitoring** mechanism in close cooperation with the Member States and with the support of European bodies, as specified in this Regulation.
2. Member States shall cooperate with the Commission to allow it to carry out the tasks conferred on it by this Regulation. Member States shall also cooperate with the Commission during the preparatory, on-site visit, reporting and follow-up phases of evaluations.

Article 4

Evaluations

Evaluations may consist of questionnaires and on-site visits. Both may be supplemented by presentations by the evaluated Member State on the area covered by the evaluation. On-site visits and questionnaires may be used either independently or in combination in relation to specific Member States and/or specific areas. On-site visits may be announced or unannounced.

Article 5

Multiannual programme

1. A multiannual evaluation programme covering a period of five years shall be established by the Commission, ~~in accordance with the procedure referred to in Article 15 (2),~~ not later than six months before the start of the next five-year period. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2).**

2. The multiannual programme shall contain the list of Member States to be evaluated each year. Each Member State shall be evaluated at least once during each five-year period. The order in which the Member States are to be evaluated shall be based on a risk analysis taking into account the migratory pressure, internal security, the time which has elapsed since the previous evaluation and the balance between the different parts of the Schengen *acquis* to be evaluated.
3. The multiannual programme may be adapted, if necessary, in accordance with the procedure referred to in paragraph 1.

Article 6

Risk analysis

1. By not later than 30 September each year, Frontex shall submit to the Commission a risk analysis taking into account migratory pressure and making recommendations for priorities for evaluations in the next year. The recommendations shall refer to specific sections of the external borders and to specific border crossing-points to be evaluated in the next year under the multiannual programme. The Commission shall make this risk analysis available to the Member States.
2. By the same deadline as stated in paragraph 1, Frontex shall submit to the Commission a separate risk analysis making recommendations for priorities for evaluations to be implemented in the form of unannounced on-site visits in the next year. These recommendations may concern any region or specific area and shall contain a list of at least ten specific sections of the external borders and ten specific border crossing-points. **The Commission may at any time request Frontex to submit to it a risk analysis making recommendations for evaluations to be implemented in the form of unannounced on-site visits.**

Article 7

Questionnaire

1. The Commission shall send a standard questionnaire to the Member States to be evaluated in the next year by not later than 15 August of the previous year. The standard questionnaires shall cover the relevant legislation and the organisational and technical means available for implementation of the Schengen *acquis* and statistical data on each field of the evaluation.
2. Member States shall provide their replies to the questionnaire to the Commission within six weeks of communication of the questionnaire. The Commission shall make the replies available to the other Member States.

Article 8

Annual programme

1. Taking into account the risk analysis provided by Frontex in accordance with Article 6, the replies to the questionnaire referred to in Article 7 and, where appropriate, **Europol or** other relevant sources, an annual evaluation programme shall be established by the Commission by not later than 30 November of the previous year. The programme may provide for evaluation of:
 - application of the *acquis* or parts of the *acquis* by one Member State, as specified in the multiannual programme;
 - and, in addition, where relevant:
 - application of specific parts of the *acquis* across several Member States (thematic evaluations);
 - application of the *acquis* by a group of Member States (regional evaluations).
2. The first section of the programme, ~~adopted in accordance with the procedure referred to in Article 15 (2)~~, shall list the Member States to be evaluated in the next year in accordance with the multiannual programme. This section shall list the areas to be evaluated and the on-site visits. **This section shall be adopted by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2).**
3. The Commission shall draw up the second section of the programme, which shall list the unannounced on-site visits to be carried out in the next year. This section shall be considered confidential and shall not be communicated to the Member States.
4. The annual programme may be adapted, if necessary, in accordance with paragraphs 2 and 3.

Article 9

List of experts

1. The Commission shall compile a list of experts designated by Member States for participation in on-site visits. The list shall be communicated to the Member States.
2. Member States shall indicate the areas of expertise of each expert, ~~with reference to the areas listed in the Annex to this Regulation~~. Member States shall notify the Commission of any changes as soon as possible.
3. Member States shall indicate which experts can be made available for unannounced on-site visits in accordance with the requirements set out in Article 10(5).
4. The experts shall have appropriate qualifications, including a solid theoretical knowledge and practical experience in the areas covered by the evaluation mechanism, along with sound knowledge of evaluation principles, procedures and techniques, and shall be able to communicate effectively in a common language.
5. Member States shall ensure that their designated experts meet the requirements specified in the previous paragraph, including by indicating the training the experts

have received. In addition, Member States shall ensure that the experts receive continuous training in order to continue to comply with these requirements.

Article 10

Teams responsible for on-site visits

1. On-site visits shall be carried out by teams appointed by the Commission. The teams shall consist of experts drawn from the list of experts referred to in Article 9 and Commission ~~representatives~~officials. The Commission **shall make an effort** to ensure the geographical balance and competence of the experts in each team. Member States' experts may not participate in an on-site visit to the Member State where they are employed.
2. The Commission ~~may~~ **shall** invite Frontex, **and where appropriate**, Europol, Eurojust or other relevant European bodies to designate a representative to take part as an observer in a visit concerning an area covered by their mandate.
3. The number of experts (including observers) participating in evaluation visits may not exceed eight persons for announced on-site visits and six persons for unannounced on-site visits.
4. In the case of announced visits, the Member States whose experts have been appointed in accordance with paragraph 1 shall be notified by the Commission not later than four weeks before the on-site visit is scheduled. Member States shall confirm the availability of the experts within one week.
5. In the case of unannounced visits, the Member States whose experts have been appointed in accordance with paragraph 1 shall be notified by the Commission not later than one week before the on-site visit is scheduled. Member States shall confirm the availability of the experts within 48 hours.
6. The leading experts for on-site visits shall be a Commission ~~official~~ **representative** and an expert from a Member State, who shall be appointed prior to the on-site visit jointly by the members of the team of experts.

Article 11

Conduct of on-site visits

1. The on-site visit teams shall undertake all necessary preparatory activities in order to ensure the efficiency, accuracy and consistency of on-site visits.
2. The Member State concerned shall be notified:
 - at least two months before an announced on-site visit is due to take place;
 - at least 48 hours before an unannounced on-site visit takes place.

3. The members of the on-site visit team shall each carry identification authorising them to conduct on-site visits on behalf of the European Union.
4. The Member State concerned shall ensure that the team of experts can directly address relevant persons. It shall ensure that the team has access to all areas, premises and documents required for the evaluation. It shall ensure that the team is able to exercise its mandate to verify the activities in the areas to be evaluated.
5. The Member State concerned shall, by any means within its legal powers, assist the team in performing its task.
6. In the case of announced on-site visits, the Commission shall provide the relevant Member States with the names of the experts in the team in advance. The Member State concerned shall designate a contact point for making the practical arrangements for the on-site visit.
7. The Member States shall be responsible for making the necessary travel and accommodation arrangements for their experts. The travel and accommodation costs for experts participating in the visits shall be reimbursed by the Commission.

Article 12

Verification of the free movement of persons at internal borders

Notwithstanding Article 10, teams for unannounced on-site visits to verify the absence of controls at internal borders shall consist of Commission ~~official~~ **representatives** only.

Article 13

Evaluation reports

1. A report shall be drawn up following each evaluation. The **evaluation** report shall be based on the findings of the on-site visit and the questionnaire, as appropriate.
 - (a) If the evaluation is based only on the questionnaire or an unannounced visit, the report shall be drawn up by the Commission.
 - (b) In the case of announced on-site visits, the report shall be drawn up by the team during the visit. The Commission ~~official~~ **representative** shall take overall responsibility for drafting the report and ensuring its integrity and quality. In case of disagreement, the team shall endeavour to reach a compromise. Dissenting opinions may be included in the report.
2. The report shall analyse the qualitative, quantitative, operational, administrative and organisational aspects, as appropriate, and shall list any shortcomings or weaknesses established during the evaluation. The report shall contain recommendations for remedial action and deadlines for implementing them.
3. One of the following classifications shall be given to each finding in the report:

- (a) compliant;
 - (b) compliant but improvement necessary;
 - (c) non-compliant.
4. The Commission shall communicate the **draft** report to the Member State concerned within six weeks of the on-site visit or of receipt of the replies to the questionnaire, as appropriate. The Member State concerned shall provide its comments on the report within two weeks.
5. The Commission ~~expert~~ shall present the **draft** report and the reply from the Member State to the committee established in accordance with Article ~~15~~ **17**. Member States shall be invited to comment on the replies to the questionnaire, the **draft** report and the comments by the Member State concerned.

On this basis, the Commission shall decide on the evaluation report and recommendations addressing the classification of the findings referred to in paragraph 3 shall be adopted by the Commission in accordance with the procedure referred to in Article 15 (2). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2).

Within one month after adoption of the report, the Member State concerned shall provide the Commission with an action plan to remedy any weaknesses identified.

After consulting the team of experts, the Commission shall present its assessment of the adequacy of the action plan to the committee established in accordance with Article ~~15~~ **17**, **within one month of receiving the action plan from the Member State.** Member States shall be invited to comment on the action plan.

6. The Member State concerned shall report to the Commission on implementation of the action plan within six months of receipt of the **evaluation** report and shall thereafter continue to report every three months until the action plan is fully implemented. Depending on the severity of the weaknesses identified and the measures taken to remedy them, the Commission ~~may schedule announced visits in accordance with the procedure referred to in Article 15 (2) to verify implementation of the action plan~~ **shall decide on announced visits to verify implementation of the action plan. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).** The Commission may also schedule unannounced on-site visits.

The Commission shall inform the committee established in accordance with Article ~~15~~ **17**, on a regular basis, about **the** implementation of the action plan.

7. If an on-site visit reveals a serious deficiency deemed to have a significant impact on the overall level of security of one or more Member States, the Commission, on its own initiative or at the request of a Member State, shall inform the Council and the European Parliament as soon as possible.

Article 14

Measures at the external borders and Frontex support

1. Where serious deficiencies in the carrying out of external border control or return procedures are identified in the evaluation report, and with a view to ensuring compliance with the recommendations referred to in Article 13 (5), the Commission may decide to request the evaluated Member State to take certain specific measures, which may include one or more of the following:

- **initiation of the deployment of European Border Guard teams in accordance with the provisions of the Frontex Regulation;**
- **submission of its strategic decisions on risk assessment and plans for the deployment of equipment for approval to Frontex;**
- **closing of a specific border crossing point for a limited period of time until the weaknesses are remedied.**

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

2. The Commission shall inform the committee established in accordance with Article 17 on a regular basis on the progress in the implementation of the measures referred to in paragraph 1 and on its impact on the deficiencies identified.

Article 15

Serious deficiencies related to external border control or return procedures

1. Notwithstanding the six month period for reporting on the implementation of an action plan referred to in Article 13 (6), if the evaluation report referred to in Article 13 (5) concludes that the evaluated Member State is seriously neglecting its obligation to carry out external border control or return procedures, the evaluated Member State shall report on the implementation of the action plan within three months of receipt of the evaluation report.

2. If, following the three months period referred to in paragraph 1, the Commission finds that the situation persists, Articles 23, 23a and 26 of the Schengen Borders Code apply.

Article 14-16

Sensitive information

The teams shall regard as confidential any information they acquire in the course of performing their duties. The reports drawn up following on-site visits shall be classified as

restricted. The Commission, after consulting the Member State concerned, shall decide which part of the report can be made public.

Article 15

Committee

- ~~1. The Commission shall be assisted by a committee made up of representative of the Member States and chaired by the representative of the Commission.~~
- ~~2. Where reference is made to this paragraph, Articles 4, 7 and 8 of Decision 1999/468/EC shall apply.~~

Article 17

Committee

- 1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.**
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.**

Article 18

Transitional provisions

1. The first multiannual programme in accordance with Article 5 and the first annual programme in accordance with Article 8 shall be established six months after this Regulation enters into force. The starting dates for both programmes shall be one year after this Regulation enters into force.
2. The first risk analysis to be provided by Frontex in accordance with Article 6 shall be provided to the Commission not later than three months after this Regulation enters into force.
3. Member States shall designate their experts in accordance with Article 9 not later than three months after this Regulation enters into force.

Article 19

Information of the European Parliament **and the Council**

The Commission shall inform the European Parliament **and the Council** of the recommendations adopted by the Commission in accordance with Article 13(5).

Article ~~18~~20

Reporting to the European Parliament and the Council

The Commission shall present a yearly report to the European Parliament and the Council on the evaluations carried out pursuant to this Regulation. The report shall be made public and shall include information on:

- the evaluations carried out during the previous year, and
- the conclusions drawn from each evaluation and the state of play with regard to remedial action.

Article ~~19~~21

Repeal

Part II of the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/Com-ex (98) 26 def), entitled ‘Implementation committee for the States already applying the Convention’, shall be repealed with effect from one year after the entry into force of this Regulation.

Article ~~20~~22

The Council may decide to carry out the Schengen evaluations referred to in Acts of Accession concluded after the entry into force of this Regulation in accordance with this Regulation.

Article ~~21~~23

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the ~~Treaty on the Functioning of the European Union~~ **Treaties**.

Done at Brussels,

For the European Parliament
The President

For the Council
The President